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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,055	10/27/2003	Patrick P. Hussey	2874-CIP	6006

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EXAMINER

MORAN, KATHERINE M

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/695,055

Applicant(s)

HUSSEY, PATRICK P.

Examiner

Katherine Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/27/03, 5/23/05</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1 and 25 are objected to because of the following informalities: claim 1: line 11: insert --and-- after "lens", claim 25, line 11: insert --and-- after "lens,", line 22: there appears to be a word missing after "said". Appropriate correction is required.

### ***Specification***

2. The disclosure is objected to because of the following informalities: pg.1, line 5: insert --now U.S. Patent No. 6,637,038-- after "10/098,980"; pg.14, line 12: delete "24" and insert --34--. Please check the specification for numerous instances where both reference numbers 24 and 34 have been used for the same element "lower intake aperture".

Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,637,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the parent patent include the combination of structural features as outlined in claims 1-34.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 25-29 and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Tackles et al. (Tackles, U.S. 6,009,564). Tackles '564 discloses the invention as claimed. Tackles teaches a sport goggle 10 for wearing on the face of a user having an improved air venting system to enhance air flow through the goggle comprising a goggle body 15 or 16 having an exterior surface and an interior surface and having a lens aperture surrounded by a top wall, a bottom wall, and two sidewalls, a lens 12 or 14 mounted in the lens aperture. The lens has a top lens portion adjacent the top wall of the goggle body and a bottom lens portion adjacent to the bottom edge of the body. An eye cavity is formed between the face of the wearer, the lens, and the interior

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surface of the goggle body when the goggle body is mounted on the face of the wearer. At least one lower intake aperture 39 communicates through the goggle body in communication with the eye cavity. At least one venting aperture 34 is located in the sidewall of the goggle body, the aperture 34 communicating through the body with the eye cavity and extending to the top wall and acting as body venting apertures. Curved exterior surface dimension means 24 directs airflow thereover to create negative air pressure immediately adjacent to the venting aperture as shown in Figures 1-4. Figures 1-4 show the curved means 24 through side, front, and to views. Upper intake apertures 36 communicate with the eye cavity adjacent to the top wall and curved ridge 32 projects from the top wall adjacent to the upper intake apertures.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tackles '564 in view of Tsubooka (U.S. 6,601,240). Tackles discloses the invention substantially as claimed. However, Tackles doesn't teach one or a plurality of body intake apertures communicating through the bottom wall with the eye cavity. Tsubooka teaches a plurality of body intake apertures communicating through the bottom wall (shown but not labeled as positioned under apertures 12d in Figure 1). These apertures

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serve as additional venting means for increased air flow within the eye cavity.

Therefore, it would have been obvious to one of ordinary skill in the art to provide Tackles goggles with a plurality of body intake apertures communicating through the bottom wall so that an increased air flow can be accomplished.

### ***Conclusion***

9. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Kmm

September 29, 2005

A handwritten signature in black ink, appearing to read 'K Moran', with a long horizontal stroke extending to the right.

Katherine Moran

Primary Examiner, AU 3765